

	Link to Final Agency Decision
	7-1800-19479-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Conditional License and Fine Imposed on the License of Julene Kraiter	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
--	---

An Evidentiary Hearing was conducted in this matter by means of a telephone conference call on April 1, 2008. The Administrative Law Judge (ALJ), Richard C. Luis, presided over the matter from the Office of Administrative Hearings in St. Paul. Michelle C. Winkis, Chief Assistant Clay County Attorney, Clay County Courthouse, 807 North 11th Street, P. O. Box 280, Moorhead, MN 56561-0280, appeared on behalf of the Department of Human Services (Department) and the Clay County Social Services Department (Local Agency). Julene Kraiter, 1020 Seventh Street North, Moorhead, MN 56560, appeared on her own behalf, both in Moorhead.

The hearing record in this matter closed at the conclusion of the proceeding on April 1, 2008.

STATEMENT OF THE ISSUE

Whether it is appropriate to affirm the imposition of terms of the Order Imposing a Conditional License and a Fine in the Amount of \$400.00 against Ms. Kraiter (Licensee) for violations of statutory and rule requirements applicable to her license for the period between June 25 and July 27, 2007, including that a helper/caregiver was assisting in the care of infants and had not completed training on reducing the risk of Sudden Infant Death Syndrome (SIDS) and Shaken Baby Syndrome, and that the Licensee allowed unsupervised direct contact with a daycare child during daycare hours with a person for whom the required background study had not been submitted (by allowing that person to pick up a child from her care and to transport that child).

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Julene Kraiter has operated a daycare facility at her home for eleven years.¹ On June 25, 2007, the Local Agency received a report regarding lack of supervision at the Licensee's home. During the investigation, the Licensee admitted to leaving the daycare children alone for three to five minutes, during which time one of the daycare children was bitten on the ear by the Licensee's dog.

2. During the course of the same investigation, the Licensee admitted to using a helper to care for children before the helper had completed Shaken Baby/SIDS training.

3. On June 29, 2007, the Local Agency issued a Correction Order to the Licensee for failure to provide adequate supervision in connection with leaving the children alone for three to five minutes, during which time one of the daycare children was bitten on the ear by her dog, of which the Licensee was unaware, in violation of Minn. Rules 9502.0315, subp. 29a and .0365, subp. 5, and for failing to have a helper complete Shaken Baby/SIDS training before the helper assisted with the care of infants, in violation of Minn. Stat. § 245A.144.

4. The Licensee responded to the Correction Order noted above on July 7, 2007, stating that she had corrected the violations regarding leaving children alone (that children will not be left alone again, and infants would remain with her when Ms. Kraiter is in the restroom), and that her dog will be kept separated from children.

Regarding using a helper before the helper had Shaken Baby/SIDS training, the Licensee responded that her helper, the Licensee and the Licensee's husband watched SIDS/Shaken Baby Syndrome videos from ("Resource & Referral") on July 1, 2007.²

5. A visit was made to Ms. Kraiter's family childcare home for the purpose of relicensing on July 18, 2007. At that time, the Local Agency issued a Correction Order for failure to have a written drug/alcohol policy regarding her helper, in violation of Minn. Stat. § 245A.04, subd. 1(c), failure to have a written grievance policy in violation of Minn. Stat. § 245A.04, subd. 1(d), failure to post Correction Orders that had been issued on July 18, 2006 and June 29, 2007, in violation of Minn. Stat. § 245A.06, failure to have updated immunization records for two children, in violation of Minn. Rule 9502.0405, subp. 4(C), failure to have an outlet in the basement covered with a safety plate, in violation of Minn. Rule 9502.0425, subp. 18, and failure to have monthly logs for fire and storm drills, in violation of Minn. Rule 9502.0435, subp. 8F.

¹ Testimony of Ms. Kraiter.

² Ex. 9.

6. The Licensee submitted her list of remedies for violations listed in the Correction Order cited in the preceding Finding on July 31, 2007, stating that all of the deficiencies listed had been corrected, and admitting that she had not posted any fire or storm drill logs because her original copy was "lost". She alleged that she would start a new set of logs in August, 2007.³

7. On July 20, 2007, Ms. Kraiter's Licensing Worker witnessed one of the Licensee's daycare children in the company of an adult at a local McDonald's during lunch hour. The adult was not the parent of the daycare child, the Licensee had not prepared a background study on that adult, nor was there any written permission from the child's parent to allow another adult to transport the child during daycare hours, in violation of Minn. Stat. § 245A.04, subd. 3 and Minn. Rule 9502.0435, subp. 9D.

8. A Correction Order was issued on the basis of the situation described in the preceding Finding on July 24, 2007, to which the Licensee responded on July 25, 2007. The Licensee responded that she had, immediately after receiving the Correction Order, obtained a letter from the child's parent stating that it was "o.k." for the adult involved in the situation to transport the child, and that the adult who was observed with the child by the Clay County Licensuror did have the appropriate background checks from the State of North Dakota and "Clay County". Ms. Kraiter added that the adult who accompanied the daycare child was a "social worker",⁴ but admitted at the hearing that the person's background study had not been filed with the Local Agency before July 20, 2007, nor had she ever seen a background check on that person.

9. On July 27, 2007, the Local Agency received a report regarding lack of supervision, specifically that the Licensee had allowed an infant in her care to roll off a bed approximately three months earlier, leaving a bump and bruise on the infant's head. Regarding this incident, the Local Agency issued a Correction Order for failure to provide adequate supervision, because the infant (who was approximately five months old at the time), had rolled off a bed when he had been left alone, for failure to report the infant's injury to the Local Agency immediately, and for failure to post Correction Orders in a place that is conspicuous to people receiving services and to all visitors, in violation of Minn. Stat. § 245A.06, and Minn. Rules 9502.0315, subp. 29A, .0365, subp. 5 and .0375, subp. 20.⁵

10. The Local Agency, in its subsequent investigation, determined that the Licensee had told the mother of the injured infant that the infant rolled off the bed when the Licensee was in the process of putting the soiled diaper in the garbage. The Licensee reported to the Local Agency's Child Protection worker

³ Ex. 11.

⁴ Ex. 12, Ex. 16.

⁵ Ex. 13.

that the baby rolled off the bed while the Licensee was in the process of getting a diaper in the hall closet next to the bedroom.

11. The Local Agency's concern about the conflicting stories in the preceding Finding is that, if the story told originally to the infant's parent was correct, the Licensee had placed herself out of sight or hearing of the infant when she placed the soiled diaper in the garbage, which was two or three rooms away from the room where the infant had been left on the bed. It appeared to the Local Agency that the Licensee may have concocted the version she gave to Child Protection in order to appear that she was in compliance with the requirement to be within sight or hearing distance of the child in her care.

12. When Licensing Worker Kathleen Cardinal called on the Licensee on July 27, 2007, the earlier Correction Orders were obscured behind Ms. Kraiter's license and a large candle, situated at the end of the room opposite the entrance to the room.⁶

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction in this proceeding pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The Notice of Hearing was proper, and the Department of Human Services has fulfilled all procedural requirements

3. Minn. Stat. § 245A.07, subd. 3(C)(4) authorizes the Commissioner of Human Services to fine license holders \$200.00 for each occurrence of violations of law or rule governing matters of health, safety, or supervision, including but not limited to failure to submit a background study.

4. It is appropriate to fine the Licensee \$200.00 for violation of Minn. Stat. §§ 245A.50, subd. 5, and 245A.144, because one of her helpers/care givers was assisting in the care of infants without having completed training on the risk of Sudden Infant Death Syndrome and Shaken Baby Syndrome.

5. It is appropriate to fine the Licensee \$200.00 for violation of Minn. Stat. §§ 245A.04, subd. 3, and 245C.04, subd. 1, pertaining to the necessity for background studies, because she allowed an adult to pick up a child from her care when there was no written permission from the child's parent to transport that child, and the Licensee had not submitted the required background study on that adult.

⁶ Testimony of Ms. Cardinal.

6. Because of the various violations of statute and rules applicable to the Licensee's license to practice child daycare, it is appropriate to issue a Conditional License, related to the violations noted in the Findings of Fact that occurred in June and July of 2007.

Based upon the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED:

1. That a Conditional License be issued, which Conditional License would required the Licensee to follow and comply with all parts of Minnesota Rules and Laws.

2. That no variances to age distribution or capacity would be granted during the conditional license period.

3. That the Licensee must complete a minimum of six hours of additional training by a date specified by the Department on Safety/Supervision of Children, which training is in addition to the annual training requirements listed in Minn. Stat., Chapter 245A, and which training must be approved by the Local Agency, and that the Licensee submit documentation of her attendance at the training to the Local Agency.

4. That the Licensee must provide a detailed, written plan for supervision of children in her care to the Local Agency, by a date specified by the Department, and approved by Clay County Family Services, which plan addresses appropriate supervision both indoors and outdoors and addresses the Licensee's ability to intervene to protect the health and safety of children in her care.

5. That copies of the Order of Conditional License must be provided to parents of children in care, or the Licensee must document that all parents have been given an opportunity to review that Order, and she must obtain parent signatures for each currently enrolled child, verifying that they either received a copy of the Conditional Order or had an opportunity to review it, all of which documentation must be submitted to the Local Agency by a date specified by the Department.

6. That for any new families, the Licensee must submit documentation of having presented and notified them of the Order of Conditional License within five days of any child's admission to her program.

IT IS RECOMMENDED FURTHER that the Order of Conditional Licensure be in effect for one year.

Dated: April 29, 2008

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Taped.
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Cal Ludeman, Commissioner, Minnesota Department of Human Services, P. O. Box 64998, St. Paul, MN 55164-0998, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.